

Court No. - 8

Case :- WRIT - A No. - 9227 of 2023

Petitioner :- Jokhan Prasad Singh And Another

Respondent :- U.P. Jal Nigam (Rural) Thru. Managing Director Lko And 2 Others

Counsel for Petitioner :- Rankaj Kumar Vishwakarma, Rajesh Singh

Counsel for Respondent :- Samir Om

Hon'ble Pankaj Bhatia, J.

1. The present petition has been filed by the petitioners alleging that despite retirement, neither the petitioner no.1 nor the petitioner no.2 were paid the gratuity amount to which they are entitled. It has been further elaborated that after retirement of the petitioner no.1, the gratuity amount payable to him, was assessed as Rs.5,02,135/- out of the same amount, an amount of Rs.1,01,056/- was stopped/ deducted and not paid on the ground that during his service excess amount was paid towards salary, thus, the petitioner no.1 has been paid the balance amount of Rs.4,01,079/- and the amount of Rs.1,01,056/- has been restrained by the respondents from the gratuity amount, which according to the Counsel for the petitioner is bad in law.

2. As regards the petitioner no.2, the amount of gratuity payable after retirement was quantified at Rs.5,14,228/- out of which Rs.2,08,446/- was appropriated towards alleged excess salary paid to the petitioner no.2 while he was in service and the balance amount payable to the petitioner no.2 was quantified at Rs.3,05,782/- and even the said amount has not been paid to him.

3. In the light of the said fact, the submission of the Counsel for the petitioner is that in view of law laid down in the cases of ***State of Punjab and others vs Rafiq Masih (White Washer) and others*** and ***Thomas Daniel vs State of Kerala and others; 2022 (40) LCD 1338***, no amount can be effected after retirement on the ground that some excess salary was paid and thus, no amount could have been appropriated as has been done in the case of the petitioner no.1 and the petitioner no.2. It is further argued that even in terms of the U.P. Retirement Benefits Rules applicable to the employees of the respondents, no amount can be deducted from the gratuity unless the conditions specified under Section 351-A of the CSR Rules are found to be available.

4. Admittedly no disciplinary proceedings have been initiated. The only ground being that some excess amount was paid towards salary.

5. In view of the submissions made above, although controverted by the Counsel for the respondent, Sri Samir Om that the amount was paid in excess, for which, the respondent can recover and has rightly appropriated the said amount.

6. Considering the submissions made at the bar, the deductions of the amount from the gratuity is bad on both counts, firstly, that the same could not be done in view of the law propounded in the case of *Rafiq Masih (Supra)* and secondly, even otherwise, even in terms of the mandate of U.P. Retirement Benefits Rules, no amount should be appropriated from the gratuity amount unless the conditions referred to under Section 351-A of the CSR Rules are available.

7. The said conditions are not available, as such, this Court has no hesitation in holding that restraining/ appropriation of the amounts by the respondents from the gratuity payable to the petitioners was wholly arbitrary and illegal, thus, the writ petition is **allowed** with directions that the petitioner no.1 shall be paid the amount of Rs.1,01,056/- along with interest from 30th day of retirement till actual payment/ realization at the rate of 7@ per annum, and the petitioner no.2 shall be paid the amount of Rs.5,14,228/- along with interest at the rate of 7% per annum from 30th day of his retirement till actual payment/ realization.

8. The amount as directed above shall be paid to the petitioners within a period of six weeks from today, failing which, the Chief Account Officer and the Managing Director of the Jal Nigam (Rural), Lucknow would be liable for contempt.

Order Date :- 5.12.2023

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